

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

ORALIA DIAZ,

Plaintiff,

v.

KITTY LIAO HSU, d/b/a  
BASKIN ROBBINS,

Defendant.

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CIVIL ACTION NO. \_\_\_\_\_

JURY DEMANDED

**COMPLAINT**

Plaintiff Oralia Diaz brings this cause of action against Kitty Liao Hsu, d/b/a Baskin Robbins. Ms. Diaz respectfully shows that the Baskin Robbins, owned by Kitty Liao Hsu, is not accessible to individuals with mobility disabilities, in violation of state and federal laws.

**STATEMENT OF CLAIM**

1. One of the rights that we all treasure is our ability to move freely in an integrated society where all of us are ostensibly equal. This freedom allows us to travel, visit stores, and eat in restaurants anywhere along the way, and generally to feel safe in the knowledge that we will not be turned away. However, these rights are illusory if people with disabilities are turned away or are excluded from the services and facilities that able-bodied people enjoy solely based on their status as people with disabilities.

2. Since the age of three, Ms. Diaz's mobility has steadily diminished as a result of polio. She used to be able to walk with some assistance, but for the past several years, she has used a wheelchair a person with a physical disability and mobility impairments, brings this action for declaratory and injunctive relief, attorneys' fees, costs, and litigation expenses against Defendant for violations of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 *et*

*seq.* (“ADA”), and its attendant regulations, the Americans with Disabilities Act Accessibility Guidelines (“ADAAG”), the Texas Accessibility Standards (“TAS”), promulgated under the Texas Architectural Barriers Act (“TABAA”), Tex.Gov’t. Code § 469, and Chapter 121 of the Texas Human Resources Code, Tex.Hum.Res. Code §121.001 *et seq.* (“Chapter 121”).

3. Defendant refused to provide Ms. Diaz and others similarly situated with an accessible entrance, accessible parking spaces, and an accessible restroom in its restaurant on Edgebrook Drive, thereby denying Ms. Diaz the ability to enjoy the goods, services, facilities, privileges, advantages, and accommodations at Baskin Robbins.

#### JURISDICTION AND VENUE

4. This action is brought pursuant to Title III of the ADA, TABA, TAS, and Chapter 121. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 2201. Ms. Diaz further invokes the supplemental jurisdiction of this Court, pursuant to 28 U.S.C. § 1367(a), to consider her state law claims.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), as the events complained of occurred in the City of Houston, Harris County, Texas, wherein the Edgebrook Baskin Robbins is located.

#### PARTIES

6. Oralia Diaz has mobility impairments and uses a wheelchair. She is a “qualified individual with a disability” within the meaning of ADA Title III and a “[p]erson with a disability” within the meaning of Chapter 121.

7. Defendant Kitty Liao Hsu owns and operates the Baskin Robbins located at 1101 Edgebrook Drive, Houston, TX 77034 (hereinafter, “Baskin Robbins”). As “a restaurant, bar, or other establishment serving food or drink,” the restaurant is a public accommodation with the meaning of Title III of the ADA and TABA. *See* Tex. Code Ann. § 469.003(a)(4) (applying

TAS to buildings defined as public accommodations under the ADA). It is also a public facility within the meaning of Chapter 21, Tex.Hum.Res. Code §121.003. Defendant can be served process at 11603 Island Manor Street, Pearland, TX 77584.

#### FACTS

8. Ms. Diaz developed polio at the age of three, and her mobility has decreased over the years. She used to be able to walk with some assistance, but for the past several years, she has used a wheelchair. Ms. Diaz is determined not to let her mobility impairments keep her from living a normal, active, and social life.

9. Like many Houstonians, Ms. Diaz and her family frequented the Baskin Robbins because they enjoy the family atmosphere and delicious desserts.

10. Prior to November 2012, Ms. Diaz used to frequent the Baskin Robbins around once a month with her two children. At the Baskin Robbins, Ms. Diaz has encountered numerous barriers to access, such as an inaccessible entrance for individuals who use wheelchairs, no ramp for individuals who use wheelchairs, and high curbs with no curb cuts. Additionally, there is no handicap accessible parking spot, and the one unisex bathroom is inaccessible.

11. Although Ms. Diaz has a wheelchair accessible van, she cannot exit her vehicle when the parking lot is full because there are no accessible parking spots for her. There are eight parking spaces around the building, none of which have an accessibility symbol, nor are they wide enough to be accessible. The ADA requires that one out of every eight parking spaces be made van accessible. It is readily achievable and technically feasible for the Defendant to repaint the parking lot at the Baskin Robbins to meet the ADA requirement. However, Baskin Robbins has not done so.



**Parking adjacent to raised Baskin Robbins. No accessible route or parking spaces are provided.**

12. Furthermore, there is no route of travel for Ms. Diaz to use in order to exit her vehicle. The only time Ms. Diaz is able to exit her vehicle is when she is able to park next to an empty space. Even when she is able to exit her vehicle, she must wait outside in her van while the individuals that accompany her go inside and fully use and enjoy the services and desserts that the Baskin Robbins offers. She is greatly embarrassed by this. The ADA requires that there to be at least one available accessible and safe route of travel for everyone, including individuals with disabilities. However, the Baskin Robbins does not offer an accessible and safe route of travel.

13. Moreover, there is no accessible entrance for people who use wheelchairs to enter into the Baskin Robbins. The Baskin Robbins lacks a ramp for people with wheelchairs, and the curbs are high and have no curb cuts, even though installing a ramp is readily achievable and technically feasible. When Ms. Diaz has been able to enter the Baskin Robbins, she has been forced to enter through the door in the back of the building where, with some assistance, she can get her wheelchair onto the sidewalk at its lowest point— still raised about two inches from the ground. However, it is difficult for Ms. Diaz to maneuver her wheelchair over the sidewalk.



**Raised sidewalk at the back door.**

14. The bathroom at the Baskin Robbins is inaccessible to people who use wheelchairs. There is only one unisex bathroom that does not provide adequate maneuvering space for an individual using a wheelchair. Also, the door to the bathroom is only 24 inches wide, and this is too small for many people using wheelchairs to maneuver through. The ADA requires that doors and accessible routes be at least 32 inches. Widening the door and path to the bathrooms and reconfiguring the one unisex restroom is readily achievable and technically feasible.



**Inaccessible pathway to restroom and restroom door.**



**Inaccessible restroom interior.**

15. Ms. Diaz has talked with several employees at the Baskin Robbins to make them aware of the lack of accessibility. She has also sent letters requesting reasonable accommodation to be able to access the goods and services Defendant provides, but her requests have either been refused or ignored.

16. These barriers to access have denied Ms. Diaz full and equal access to, and enjoyment of, the goods and services of the Baskin Robbins. The barriers have also been frustrating, embarrassing, and injurious to Ms. Diaz.

## CAUSES OF ACTION

### I. Violations of Title III of the ADA

17. Under the ADA, “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation by any person who owns, leases, (or leases to) or operates a place of public accommodation.” 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a).

18. Baskin Robbins is a place of public accommodation within the meaning of the ADA. Title III of the ADA requires facilities providing public accommodation be adapted, where

readily achievable, in such a manner that the facility is readily accessible to, and usable by, individuals with mobility and physical disabilities.

19. ADAAG establishes standards to which public accommodations must conform in order to comply with the ADA. Baskin Robbins must follow ADAAG requirements the establishment has undergone modifications or renovations since the passage of the ADA. Additionally, Baskin Robbins must follow ADAAG requirements because the modifications needed to create accessibility are readily achievable and not structurally impracticable within the meaning of the ADA. 42 U.S.C. § 12182(b)(2)(A)(iv).

20. Specifically, Baskin Robbins fails to meet the following ADAAG requirements:

- a. Section 404.2.3 provides that “[d]oor openings shall provide a clear width of 32 inches (815 mm) minimum.”
- b. Section 208.2 provides that when “[t]here more than one parking facility is provided on a site, the number of accessible spaces provided on the site shall be calculated according to the number of spaces required for each parking facility.”
- c. Section 502.2 provides that “[c]ar parking spaces shall be 96 inches (2440 mm) wide minimum and van parking spaces shall be 132 inches (3350 mm) wide minimum, shall be marked to define the width, and shall have an adjacent access aisle complying with 502.3.”
- d. Section 502.6 provides that “[p]arking space identification signs shall include the International Symbol of Accessibility complying with 703.7.2.1.”
- e. Section 502.7 provides that “[p]arking spaces and access aisles shall be designed so that cars and vans, when parked, cannot obstruct the required clear width of adjacent accessible routes.”



- f. Section 206.2.1 provides that “[a]t least one accessible route shall be provided within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks; and public transportation stops to the accessible building or facility entrance they serve.”
- g. Section 402.2 provides that “[a]ccessible routes shall consist of one or more of the following components: walking surfaces with a running slope not steeper than 1:20, doorways, ramps, curb ramps excluding the flared sides, elevators, and platform lifts. All components of an accessible route shall comply with the applicable requirements of Chapter 4.”
- h. Section 305.3 provides that the “clear floor or ground space shall be 30 inches (760 mm) minimum by 48 inches (1220 mm) minimum.”
- i. Section 304.3.2 provides that “turning space shall be a T-shaped space within a 60 inch (1525 mm) square minimum with arms and base 36 inches (915 mm) wide minimum.”

## II. Violations of Chapter 121, TAS, and TABA

21. Chapter 121 specifically addresses the ability of people with disabilities to integrate fully into society. Chapter 121 states the policy of Texas “is to encourage and enable persons with disabilities to participate in the social and economic life of the state, to achieve maximum personal independence, to become gainfully employed, and to otherwise fully enjoy all public facilities available within the state.” Tex. Hum. Res. Code §121.001.

22. Pursuant to the legislative mandate in TABA, the Texas Department of Licensing and Regulation adopted the Texas Accessibility Standards (“TAS”) to be the minimum



guidelines for compliance with TABA, and therefore Chapter 121. The goal of TAS is to embody the required standards of accessibility for places of public accommodation.

23. TABA applies to privately funded buildings or facilities defined as a “public accommodation” by 42 U.S.C. § 12181, and its subsequent amendments. Tex.Gov’t. Code §469.003(a)(4). The Edgebrook Baskin Robbins is as such a public facility.

24. Defendant’s violations of Sections 404.2.3, 208.2, 502.2, 502.6, 502.7, 206.2.1, 402.2, 305.3 of ADAAG, as alleged above, also constitute violations of the corresponding sections of TAS, Sections 404.2.3, 208.2, 502.2, 502.6, 502.7, 206.2.1, 402.2, 305.3. Thus, Defendant’s barriers have denied and continue to deny Ms. Diaz—because of her disabilities—the opportunity to participate in or benefit from a good, service, or accommodation that is equal to that afforded other individuals, thus violating Chapter 121. Tex.Hum.Res. Code §121.001 *et seq.*

## RELIEF REQUESTED

### Injunctive Relief

25. As a proximate result of the structural barriers present within Defendant’s establishment, Ms. Diaz has suffered and will continue to experience unlawful discrimination as a result of Defendant’s non-compliance with the ADA, Chapter 121, and TABA. Injunctive relief is necessary so that Ms. Diaz and all individuals with disabilities can access the Baskin Robbins, as required by law, and to require Defendant to modify the building by widening inaccessible doors, installing ramps in compliance with the ADA, and otherwise providing accessible routes to and about the restaurant. Injunctive relief is also necessary to compel Defendant to provide an accessible parking space in the parking lot of the restaurant.

26. Plaintiff is entitled to injunctive relief pursuant to 42 U.S.C. § 12133. As such, injunctive relief is necessary to order Defendant to immediately remedy the violations that make the establishment inaccessible to Ms. Diaz and others who require the use of a wheelchair for mobility.

#### Declaratory Relief

27. This suit involves an actual controversy within the Court's jurisdiction, and the Court may declare Ms. Diaz's rights under the laws of the United States and Texas, and grant her any relief that is necessary as necessary and proper under 28 U.S.C. §§ 2201-2202. Ms. Diaz is entitled to declaratory judgment concerning Defendant's violations of law, specifying the rights of individuals with disabilities to access the goods and services at the Baskin Robbins.

#### Statutory Damages

28. Ms. Diaz is entitled to damages in the amount of *at least* \$100 per violation of Chapter 121 by Defendant, pursuant to Tex.Hum.Res. Code §121.004(b). She requests \$250 per violation.

#### Attorneys' Fees and Costs

29. Plaintiff is entitled to reasonable attorneys' fees, litigation costs, and court costs, pursuant to 42 U.S.C. § 12205 and the Texas Declaratory Judgment Acts.

#### Jury Demand

30. Ms. Boyte hereby demands a trial by jury on those counts for which she is entitled to a jury trial.

#### Prayer for Relief

THEREFORE, Ms. Diaz respectfully requests this Court to award the following relief:

- A. A permanent injunction, requiring Defendant, its agents, servants, and employees, and all persons acting in concert with Defendant, to eliminate all

barriers described herein that prevent Ms. Diaz from having access to the goods, services, facilities, privileges, advantages, and accommodations the Defendant offers at the Baskin Robbins; and enjoining Defendant from violating the ADA and Chapter 121 and from discriminating against Ms. Diaz in violation of the law;

- B. A declaratory judgment that Defendant's physical barriers have prevented, and continue to prevent, Ms. Diaz from accessing the Baskin Robbins, in violation of the ADA and Chapter 121;
- C. Damages in the amount of at least \$100 per violation of Chapter 121, pursuant to Tex.Hum.Res. Code § 121.004(b);
- D. Find that Ms. Diaz is the prevailing party in this action, and order Defendant liable for Plaintiff's attorneys' fees, costs, and litigation expenses; and,
- E. Grant such other and additional relief to which Plaintiff may be entitled in this action.

Dated: July 25, 2013.

Respectfully submitted,

/s/ *Amin Alehashem*

Amin Alehashem

State Bar No. 24073832

Joseph P. Berra

State Bar No. 24027144

James C. Harrington

State Bar No. 09048500

TEXAS CIVIL RIGHTS PROJECT

2006 Wheeler Avenue

Houston, Texas 77004

(832) 767-3650 [phone]

(832) 554-9981 [fax]

ATTORNEYS FOR PLAINTIFF